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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 789

T. A. WATKINS,

Appellant,

—v.—

CITY OF WILSON,
a body corporate and politic, *et al.*,

Appellees.

APPEAL FROM THE SUPREME COURT OF NORTH CAROLINA

STATEMENT AS TO JURISDICTION

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APPEAL FROM THE SUPREME COURT OF NORTH CAROLINA

STATEMENT AS TO JURISDICTION

The Appellant, pursuant to United States Court Rules 13(2) and 15, files this his statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the Judgment and Opinion of the Supreme Court of the State of North Carolina.

Opinion Below

The Opinion of the Supreme Court of North Carolina is found in the following publications: 225 N. C. 510, 121 S. E. 2d 861, and was filed October 11, 1961. The said Opinion is attached to this Statement as Appendix B hereof.

Jurisdiction

The action, upon which the instant appeal is based, was instituted in the Superior Court of Wilson County, North Carolina, as a civil action in which appellant, as a citizen, voter and as a candidate for public office, sought injunctive and declaratory relief against the enforcement by defendants-appellees of a portion of Section 4 of the Charter of the City of Wilson, North Carolina (Appendix D, this Statement). Section 4 of the Charter of the City of Wilson deals with the elections of municipal officials, including the elections of six commissioners biennially and who constitute the governing body of the municipality of Wilson, North Carolina (State Record, pp. 45-47). The particular portion of Section 4 of the Charter of the City of Wilson, which is offensive to appellant and which he sets up in his complaint as injurious to him upon constitutional grounds, reads as follows:

> "No ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies to be filled."

The instant appeal is from the Judgment of the Supreme Court of North Carolina, which was dated and entered on the 23rd day of October, 1961, and which affirmed the Judgment of the Superior Court of Wilson County (Appendix A, this Statement). The Superior Court of Wilson County, North Carolina, had entered a final Judgment against appellant's claim of the unconstitutionality of the provision quoted above on the 27th day of June, 1961 (Appendix C-4, this Statement). The opinion of the Supreme Court of North Carolina was filed on the 11th day of October, 1961 (Appendix B, this Statement). Appellant filed no petition to re-hear following the

Opinion and Judgment of the Supreme Court of North Carolina. On the 9th day of January, 1962, appellant filed Notice of Appeal to this Court in the Supreme Court of North Carolina, along with proof of service of said Notice upon counsel for appellees (Appendices H and I, this Statement).

In his Complaint, which was filed in the Superior Court of Wilson County on the 12th day of April, 1961, and which was immediately thereafter served upon appellees as defendants, appellant sought to restrain and enjoin and to have declared void the portion of Section 4 of the Charter of the City of Wilson which is quoted in paragraph one above. Appellant alleged that appellees were preparing to and had announced their intention to enforce and apply the impleaded portion of the City Charter to the biennial City elections which were to be held on May 2, 1961, and at which time City Commissioners were to be elected (Appendix D, this Statement). As will be shown subsequently in this STATEMENT AS TO JURISDICTION, prior to the City election of May 2, 1961, and immediately thereafter appellant, without avail, sought several remedies in his pending action in order to prevent injury to him by virtue of the enforcement and application of the impleaded portion of Section 4 of the City Charter (Appendices C-1 through C-4, this Statement). In his complaint and in all subsequent pleadings, motions and petitions, appellants had alleged that his rights as a citizen and voter of the City of Wilson and as a candidate *for office as a City Commissioner*, were abridged by the impleaded provision of the City Charter, which particularly refers to and which appellees were enforcing in respect to the elections of City Commissioners. The Charter of the City of Wilson is a law of the State of North Carolina which was enacted and amended by the General Assembly of the State of North Carolina (Appendix J, this Statement).

Appellants have appealed to this Court from the final Judgment of the Supreme Court of North Carolina pursuant to Section 1257 (2) of Title 28, United States Code (28 U. S. C. 1257 (2)), this being an action wherein the constitutionality of a state statute is drawn into question and the decision below being in favor of constitutionality and against appellant.

Decisions of this Court squarely and indubitably support appellant's conclusion that this Court has jurisdiction of this appeal pursuant to 28 U. S. C. 1257 (2). The Opinion of the Supreme Court of North Carolina is based, in part, upon the spurious proposition that where the impleaded portion of Section 4 of the City's Charter is actually enforced and applied, over appellant's timely protests and diligent efforts to prevent the same from being enforced and applied to the election in which he was both a voter and a candidate, his failure to show that his tally of votes, after the election, plus a count of discarded ballots would have given him enough votes for election depletes him of standing to question the constitutionality of the statutory provision. In short, the State Supreme Court has held that in order for a candidate to be heard to question the constitutionality of the statutory provision in all aspects of its enforcement and operation he must first suffer its application and then prove that he was actually elected in spite of the application of the void and unconstitutional statute (Appendix B, this Statement). And the Court cites this Court's Opinion in *Ex Parte Levitt*, 302 U. S. 633, 58 S. Ct. 1, 82 L. ed. 493, for this shocking proposition. This is but another way of saying that the impleaded statutory provision could only injure a candidate who is "elected" but for the operation of the statute and that no candidate can assert the right to campaign or run for office as a City Commissioner, free of the coercions and effects of the stat-

ute or the right to have his constituents and supporters favor him upon their ballots without being coercively required to similarly favor five of his opponents.

But this Court has never recoiled from the task of protecting natural persons from the legislative coercions which inevitably tend to mould our society "into patterns of conformity which satisfy the majority." See Mr. Justice Douglas, dissenting in *Lathrop* v. *Donohue*, 367 U. S. 820, 81 S. Ct. 1826, 6 L. ed. 2d 1191. See also, *McCollum* v. *Board of Education*, 330 U. S. 203, 68 S. Ct. 461, 92 L. ed. 648; *Pierce* v. *Society of Sisters*, 268 U. S. 510, 45 S. Ct. 571, 69 L. ed. 1070; *Meyer* v. *Nebraska*, 262 U. S. 390, 43 S. Ct. 625, 67 L. ed. 1040; *West Virginia Board of Education* v. *Barnett*, 319 U. S. 624, 63 S. Ct. 1178, 87 L. ed. 1628. The fact that one of the rights involved, to wit, the right to seek a municipal office, is a state created right (see *Snowden* v. *Hughes*, 321 U. S. 1, 64 S. Ct. 397, 88 L. ed. 497), does not exempt the state from the strictures of the 1st and 14th Amendments in regard to the imposition of unwarranted curtailments of the liberties of conscience or freedoms of choice. Compare the several Opinions in *International Association of Machinists* v. *Street*, 367 U. S. 740, 81 S. Ct. 1784, 6 L. ed. 2d 1141. Nor has this Court ever denied that a party who is personally aggrieved by the denial of 1st Amendment rights through state legislative enactments has standing to assert those rights on review by this Court of the Judgment of a state Court. See *McCollum* v. *Board of Education*, *supra*. It is not perceived that the state has or could have such interest in the offices of elected officials, in the individual voter's ballot and in the several candidates whose names appear upon a particular ballot as will justify the state's attempted regimentation, conscription and restriction of voter's choices in the manner as required by Section 4 of the Charter of the City of Wilson. (Compare *Cohen* v. *Hurley*, 366 U. S. 117, 81 S. Ct. 954, 6 L. ed.

156; *Lathrop* v. *Donohue*, *supra*. Compare, also, *Hamilton* v. *Regents*, 293 U. S. 245, 55 S. Ct. 197, 79 L. ed. 343.)

The Supreme Court of North Carolina all but admits that appellant's capacity as a candidate for office as a City Commissioner gave him standing to question the validity of the impleaded statutory provision. The Opinion of the State Court reads, in part, as follows:

> "On the admitted facts plaintiff is not in position to call for a determination of the constitutionality of the statutory provision. Even if credited with all rejected ballots, he would not have enough votes to change the results. The court correctly dismissed the action." *Watkins* v. *City of Wilson*, 255 N. C. 510, 121 S. E. 2d 861.

Thus it is seen that the state appellate court, upon its own motion, has transformed appellant's attack upon the impleaded statute into a contest for the right and title to office. Compare *Spruill* v. *Bateman*, 162 N. C. 588, 77 S. E. 768; *State ex rel. Harris* v. *Scarboro*, 110 N. C. 232, 14 S. E. 737. This manner of interpreting appellant's action, in the face of his protracted and timely effort to enjoin the application of the impleaded statute to the May 2, 1961, elections and to have the statute declared void and in the face of his complaint (Appendices A and C-1 through C-4, this Statement), is an inexcusable evasion of the federal issue which was clearly before the Court. *Staub* v. *City of Baxley*, 255 U. S. 313, 78 S. Ct. 277, 2 L. ed. 302; *Ward* v. *Board of County Commissioners*, 253 U. S. 17, 40 S. Ct. 419, 64 L. ed. 751; *Abie State Bank* v. *Bryan*, 282 U. S. 765, 51 S. Ct. 252, 75 L. ed. 690; *Davis* v. *Wechsler*, 263 U. S. 22, 44 S. Ct. 13, 68 L. ed. 143. And it is not amiss to recall at this point that appellant had at all times asserted that the application of the imprecated section of the Charter of

Wilson prevented the elections of City Commissioners during the May 2, 1961, elections from being valid in view of asserted constitutional rights (Appendices D and E, this Statement), and that the courts of the State of North Carolina have always been open to litigation where the issue has been the validity of an election. See *Harris* v. *Miller*, 208 N. C. 746, 182 S. E. 663; *Swaringer* v. *Poplin*, 211 N. C. 700, 191 S. E. 746; *Van Amringe* v. *Taylor*, 108 N. C. 196, 12 S. E. 1005; *Hill et al.* v. *Lenoir County et al.*, 176 N. C. 572, 97 S. E. 498.

But this Court holds that it will not accept as final a state court's interpretation of allegations in a complaint asserting a federal question, *Brown* v. *Western Railroad of Alabama*, 338 U. S. 294, 70 S. Ct. 105, 94 L. ed. 100; *Davis* v. *Wechsler*, *supra*; *First National Bank of Guthrie Center* v. *Anderson*, 269 U. S. 341, 46 S. Ct. 135, 70 L. ed. 295.

Again, to say, as the state appellate court has said, that appellant has no standing to object to the application of a statute to an election in which he is a candidate, is to say that appellant must endure the burdens, inconveniences and disadvantages of the operation and application of a void and invalid statute but that he can have relief, of a salvage nature, after the statute has wrought its final devastation. This Court has never been so parsimonious in the granting of relief against void enactments. See cases holding that, where enactments are void on their face, as violative of First Amendment rights under the 14th Amendment to the Federal Constitution, a failure to apply for a license which the enactments require does not preclude a review by this Court, *Staub* v. *City of Baxley*, *supra*; *Smith* v. *Cahoon*, 283 U. S. 553, 51 S. Ct. 582, 75 L. ed. 1264; *Lovell* v. *City of Griffin*, 303 U. S. 444, 58 S. Ct. 666, 82 L. ed. 949.

Finally, appellant's right as a candidate gives him standing to assert the rights of voters who desire to list appellant as one of their choices for City Commissioner on their ballots but who do not choose to list as many as six candidates. See *National Association for the Advancement of Colored People* v. *State of Alabama, ex rel. Patterson*, 357 U. S. 449, 78 S. Ct. 1163, 2 L. ed. 2d 1488; *Traux* v. *Raich*, 239 U. S. 33, 36 S. Ct. 7, 60 L. ed. 131; *Pierce* v. *Society of Sisters, supra*. It is observed that in this case the right of appellant, as a candidate, to campaign for and receive the votes of electors, who wish to vote free of the coercions and restrictions of a statute which is obviously designed to coerce the voter's approval of candidates for whom he has no affinity, is an integral of his rights and of the rights of all such electors, *Traux* v. *Raich, supra; National Association for the Advancement of Colored People* v. *State of Alabama, ex rel. Patterson, supra*. And appellant standing, as an injured citizen and as an injured voter, to appeal to this Court is vouchsafed by such decisions as *Coleman* v. *Miller*, 307 U. S. 433, 59 S. Ct. 972, 88 L. ed. 1385; *Lesser* v. *Garnett*, 258 U. S. 130, 42 S. Ct. 217, 66 L. ed. 505.

Question Presented

Section 4 of the Charter of the City of Wilson requires that each elector who votes for city commissioners must vote upon six candidates and his failure to vote for six candidates is a circumstance which requires that his ballot be discarded. This requirement, by its terms and by its operation, outlaws the "single shot" vote whereby a minority group of electors seek to give their candidate a plurality by withholding votes from other candidates. The requirement also outlaws the "short ballot" whereby a group of less than six candidates are singled out for favor upon ballots of voters having like cleavages and municipal attitudes and aspirations. By its necessary operation the requirement "presses" a voter to give his stamp of approval upon candidates whose images are lackluster in his evaluation in order that the voter be enabled to express himself upon a candidate or candidates whose images are appealing to him (Appendix J, this Statement).

Beginning with his complaint and upon each stage of this proceeding in the State Superior and Supreme Courts appellant, who is a Negro citizen, has contended that the impleaded section of the City Charter was unconstitutional when measured by the standards of the State Constitution and when measured by the standards of the 14th Amendment to the Federal Constitution (Appendices D, C-1, C-2, C-3, C-4, E, G and H). Among other things, appellant contended in his complaint and at each stage of the proceedings in the State Superior and Supreme Courts that the impleaded section of the City Charter was repugnant to the Privileges or Immunities, the Due Process and the Equal Protection Clauses of the 14th Amendment to the Federal Constitution "by reason of the circumstance that the provision is an invasion and subversion of a voter's

right of choice as to what candidate he wishes to favor with his ballot and of a voter's right of choice as to what candidate or candidates the voter wishes to exclude from his ballot" (Appendix D, this Statement). The Opinion of the State Supreme Court and the statement of the case as therein contained conclusively indicates that the Federal Question was raised and preserved in the manner and form as indicated above. This appeal presents a single question which can be stated as follows:

1. Is Section 4 of the Charter of the City of Wilson, North Carolina, as quoted in this STATEMENT AS TO JURISDICTION, valid and constitutional when measured by the standards of the 14th Amendment to the Constitution of the United States?

Statement

On the 12th day of April, 1961, appellant filed an action in the Superior Court of Wilson County as plaintiff against the several defendants who are listed in the above styled entitlement and caused each defendant to be served, immediately thereafter, with copy of summons and complaint. Appellant brought his action as a registered voter who was qualified to participate in the May 2, 1961, biennial elections for the City of Wilson and as a candidate for membership upon the governing body of the City of Wilson, to wit, the six man board of City Commissioners. In his verified Complaint appellant alleged, in substance, that the Charter of the City of Wilson contained the following provision in reference to the election of City Commissioners:

> "No ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies to be filled."

In his Complaint, appellant alleged that the above quoted provision of the Charter of the City of Wilson was void and unconstitutional when measured by the standards of both the State and Federal Constitutions. In his Complaint appellant requested relief as follows:

"WHEREFORE, plaintiff prays the Court as follows:

(1) That a temporary injunction immediately issue, temporarily restraining defendants and each of them from applying so much of the Charter of the City of Wilson, as is first quoted in paragraph 3 above, to the May 2, 1961, elections of city commissioners.

(2) That a permanent injunction issue, permanently enjoining defendants and each of them from applying so much of the Charter of the City of Wilson, as is first quoted in paragraph 3 above, to the May 2, 1961, elections of city commissioners.

(3) That this Court conclude as a matter of law that so much of Section 4 of the Charter of the City of Wilson, as is first quoted in paragraph 3 above, is unconstitutional by reason of the state and federal constitutions, as is indicated in paragraph 6 of this complaint.

(4) That this Court conclude that any election for this biennium, to which is applied so much of Section 4 of the Charter of the City of Wilson, as is first quoted in paragraph 3 above, is null and void and without effect for the vesting of office.

(5) That this Court grant to plaintiff the right to participate in the elections for which he has filed, the freedom from the burden of the provision which is alleged in this complaint to be unconstitutional.

(6) That this Court read this verified complaint as an affidavit in support of the injunctive relief herein prayed for.

(7) For such other and further relief as to the Court may seem just and proper.

(8) For the cost of Court to be taxed against defendants" (Appendix D, this Statement).

Following the filing of his complaint and prior to the May 2, 1961, elections for the City of Wilson, appellant sought relief from the alleged invalid and impleaded provision of the Charter of the City of Wilson in the following manner:

(a) On the 21st day of April, 1961, and prior to the May 2, 1961, elections, as indicated by Appendix C-1, this Statement, appellant applied for and secured from Honorable Leo Carr, Judge Presiding over the Wake County Superior Court, an Order to show cause. The Order to show cause directed the defendants, as named in appellant's complaint, to show cause before Honorable Henry L. Stevens, Jr., on the 25th day of April, 1961, as to why the temporary restraining order, as prayed by appellant in his complaint, should not be granted.

(b) On this 25th day of April, 1961, and prior to the May 2, 1961, elections for the City of Wilson, the Order above mentioned was returned before Honorable Henry L. Stevens, Jr., Judge then presiding over the Term of Superior Court for Edgecombe County and who was currently holding the terms of Superior Court for Wilson County. After hearing upon the Order to show cause and upon appellant's motion for the temporary injunction, such as was prayed by appellant in his complaint of April 12, 1961, Honorable Henry L. Stevens, Jr., denied appellant's request for temporary relief (Appendix C-2, this Statement).

On the day following the May 2, 1961, elections for the City of Wilson, to wit, on May 3, 1961, appellant sought to preserve his rights as a voter, candidate and participant in the campaign for City Commissioner in the following manner:

(a) Appellant filed a verified motion in his cause of action in which he entreated the Superior Court of Wilson County to, among other things, declare and conclude that the so-called May 2, 1961, "elections of City Commissioners are null and void and of no effect." In his verified motion appellant also entreated the Superior Court of Wilson County to grant to him "such other and further relief as will assure him the right to participate as a voter and as a candidate in elections for City Commissioners for this biennium" (State Transcript, pages 28 to 38).

(b) In the verified motion above mentioned, which is dated May 3, 1961, appellant alleged that election officials did in fact apply the impleaded provision of the city charter to the May 2, 1961, elections for City Commissioners and placed the alleged invalid requirements of the provision upon every ballot issued for the elections of City Commissioners. Appellant also alleged that voters' compliance with the alleged illegal and unconstitutional provision of the impleaded portion of the Charter of the City of Wilson was urged by the sole local daily newspaper through its editorial columns prior to May 2, 1961, which newspaper, prior to May 2, 1961, had printed a sample ballot which bore, among other inscriptions, the following:

> "2. For legal ballot, vote for six candidates" (State Transcript, pages 28 to 38).

On the 11th day of May, 1961, appellees, as defendants, filed answer to appellant's complaint. The answer of appellees specifically admits the allegations contained in

paragraphs 1 through 4 of appellant's complaint. These admissions alone are conclusive of all of the facts necessary for resolution of all of the several questions of constitutional law which appellant raised in his complaint and these specific admissions left no questions of fact to be found by a judge or a jury for disposal of the entire controversy between appellant and appellees (State Transcript, pages 38 to 40).

On the 15th day of May, 1961, the following proceedings were held in this cause in the Superior Court of Wilson County during the May, 1961, Term of Court:

(a) The verified motion which was filed by appellant on the 3rd day of May, 1961, and which is mentioned in paragraph 3 above, was presented to the Superior Court of Wilson County below by counsel for appellant. Other than a reference to said motion, which appears in the last paragraph of Appellees' Further Answer, appellees offered no contradiction of the factual matter set out in appellant's verified motion. The motion was denied by the court and an entry to that effect was endorsed thereon by the Judge Presiding (Appendix C-3, this Statement).

(b) Immediately following the presentation of the above mentioned motion, appellant, through his counsel, moved the Superior Court of Wilson County in writing for judgment on the pleadings. The motion was denied by the court and an entry to that effect was endorsed thereon by the Judge Presiding (Appendix C-3, this Statement).

On the 19th day of May, 1961, and before the entry of Judgment in this cause, appellant petitioned the Supreme Court of North Carolina, pursuant to local practice, for a Writ of Certiorari in order to review the proceeding which had been held in the Superior Court of Wilson County (State Transcript). On the 23rd day of May, 1961,

the Supreme Court of North Carolina entered an Order in which it denied the Petition for Writ of Certiorari (State Transcript).

Appellant's action was tried on the 27th day of June, 1961, before Honorable Henry L. Stevens, Jr., Judge Presiding, upon an Agreed Statement of Facts, both parties waiving a jury trial. The Court (the Superior Court of Wilson County), entered Judgment against appellant and against his claim that the impleaded statutory provision was repugnant to the 14th Amendment of the Federal Constitution (Appendix C-4, this Statement).

Appellant appealed to the Supreme Court of North Carolina, and his appeal was heard during the fall term, 1961, and resulted in the Judgment and Opinion which are mentioned above under the section of this Statement entitled, JURISDICTION.

The facts of this case, as admitted by pleadings and as stipulated by the parties also indicate the following matter:

> "1. The plaintiff herein, T. A. Watkins, a Negro, is now a resident of the City of Wilson, North Carolina; that plaintiff is a registered voter of the City of Wilson and was entitled to vote in the municipal election held on the 2nd day of May, 1961.
>
> "5. In the election held May 2nd, 1961, the official ballot for Commissioners had printed on its face the following:
>
> 'For legal ballot vote for six candidates.'
>
> "6. 761 ballots cast in the election were not counted because of failure to vote for as many as six candidates. The plaintiff received 211 votes and his name appeared

upon a substantial number of the 761 ballots not counted. Other names also appeared on the 761 ballots not counted, but on none of them as many as six names appeared.

"The candidates declared elected and the votes received by each were as follows:

T. J. Hackney, Jr.	2,036
Edgar Norris	1,897
W. A. Peters	1,885
H. P. Benton, Jr.	1,835
W. B. Clark, Jr.	1,831
C. E. Raines	1,332"

(State Record, page 52).

The Question Presented Is Substantial

As indicated in a preceding section of this STATEMENT AS TO JURISDICTION, that is, in the matter discussed in indicating this Court's jurisdiction, the question here presented involves the presumed power of the state to require conformity of a minority with the majority's will. See *International Association of Machinists* v. *Street, supra;* Mr. Justice Black and Mr. Justice Douglas, dissenting, *Lathrop* v. *Donohue, supra; McCollum* v. *Board of Education, supra; Meyer* v. *Nebraska, supra; Pierce* v. *Society of Sisters, supra; West Virginia State Board of Education* v. *Barnett, supra.* But this case goes further in that the statute becomes an instrument for the collection of coercive votes against the will of electors. See Mr. Justice Black, dissenting in *International Association of Machinists* v. *Street, supra.* Coerced and compelled exercise of the franchise is as inimical to a free society as its denial. Finally, the instant case presents a more flagrant case of compulsive support than do cases which deal with "compelled"

contribution to causes which the "captive" supporter finds repulsive to him. Compare the *Street* and *Lathrop* cases *supra*. The instant case presents the strange spectacle of a "captive and frustrated" elector, should he abide by the dictates of the statute, or a disenfranchised elector, should he refuse to abide by the commands of the statute, (1) either by declining to vote at all, (2) or by suffering his ballot to be discarded by his favoring only those candidates for whom he has affinity. In any event the statute is replete with the certainty of the regimentation and conscription of "captive and frustrated" electors who are electing candidates to office against their will and with the disenfranchisement of electors who know what they wish but cannot be heard. The question here raised is one of moment and raises the precise point which all Opinions in the *Street* and *Lathrop* cases would assume to be settled, beyond argument, in appellant's favor.

CONCLUSION

As indicated in the foregoing STATEMENT AS TO JURISDICTION, this Court has Jurisdiction of this appeal pursuant to 28 U. S. C. 1257(2) and a substantial federal question is presented which should be resolved by this Court.

Respectfully submitted,

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APPENDICES

APPENDIX A

Judgment of State Supreme Court

SUPREME COURT OF NORTH CAROLINA

Fall Term 1961

No. 248—Wilson

T. A. WATKINS,

—v.—

CITY OF WILSON, a body corporate and politic; JOHN WILSON, Mayor and Chairman of the Board of Commissioners of the City of Wilson; THOMAS WATSON, JR., T. F. HACKNEY, WINETTE PETERS, H. P. BENTON, JR., EARL BRADBURY and EDGER NORRIS, Serving as the Board of Commissioners of the City of Wilson; MRS. CECIL NEWBERRY, MRS. T. L. NOE, MRS. ALBERT THOMAS, W. F. PEABODY, MRS. JOHN G. ASHE, JR., MRS. M. W. SUTTON, JR., all being Precinct Registrars appointed for the May 2, 1961, Elections of the City of Wilson; MRS. GEORGE THOMAS DANIELS, MRS. W. F. THRASHER, W. L. MORRIS, GARY T. FULGHUM, JOHN HARRISS, MRS. ANNIE BISHOP, JANIE LIVERMAN, MRS. DOVERY WATSON, M. D. JAMES, MRS. RUSSELL LANDEN, MRS. H. T. BARKLEY, MRS. ROBERT PEARCE, all being Precinct Election Judges appointed for the May 2, 1961, Elections of the CITY OF WILSON.

This cause came on to be argued upon the transcript of the record from the Superior Court of Wilson County: Upon consideration whereof, this Court is of opinion that

there is no error in the record and proceedings of said Superior Court.

It is adjudged by the Court here that the opinion of the Court be certified to the said Superior Court to the intent that the judgment is affirmed.

And it is considered and adjudged further that the plaintiff and sureties to the appeal bond, Charles D. James and G. K. Butterfield, do pay the costs of the appeal in this Court incurred, to wit, the sum of Twenty and 05/100 ($20.05) Dollars, and execution issue therefor. Certified to Superior Court this 23rd day of October, 1961.

ADRIAN J. NEWTON
Clerk of the Supreme Court

By SARAH B. HANNER
Sarah B. Hanner, *Deputy Clerk*

A TRUE COPY

[SEAL]

APPENDIX B

Opinion of State Supreme Court

SUPREME COURT OF NORTH CAROLINA

Fall Term 1961

Docket No. 248

T. A. WATKINS,

—v.—

CITY OF WILSON, a body corporate and politic; JOHN WILSON, Mayor and Chairman of the Board of Commissioners of the City of Wilson; THOMAS WATSON, JR., T. F. HACKNEY, WINETTE PETERS, H. P. BENTON, JR., EARL BRADBURY and EDGER NORRIS, Serving as the Board of Commissioners of the City of Wilson; MRS. CECIL NEWBERRY, MRS. T. L. NOE, MRS. ALBERT THOMAS, W. F. PEABODY, MRS. JOHN G. ASHE, JR., MRS. M. W. SUTTON, JR., all being Precinct Registrars appointed for the May 2, 1961, Elections of the City of Wilson; MRS. GEORGE THOMAS DANIELS, MRS. W. F. THRASHER, W. L. MORRIS, GARY T. FULGHUM, JOHN HARRISS, MRS. ANNIE BISHOP, JANIE LIVERMAN, MRS. DOVERY WATSON, M. D. JAMES, MRS. RUSSELL LANDEN, MRS. H. T. BARKLEY, MRS. ROBERT PEARCE, all being Precinct, Election Judges appointed for the May 2, 1961, Elections of the CITY OF WILSON.

(Filed 11 October, 1961.)

APPEAL by plaintiff from *Stevens, J.*, June 1, 1961 Civil Term of WILSON.

Appendix B

Opinion of State Supreme Court

This action was begun on 12 April 1961 when plaintiff filed his complaint alleging the charter of the City of Wilson as amended in 1957 prescribing the manner for electing city officials was unconstitutional and void, adversely affecting plaintiff's rights as an elector and candidate for the office of city commissioner at an election to be held on 2 May 1961.

The governing officials of the city are, by charter provision, a mayor and six commissioners. Nonpartisan elections are held in May in odd numbered years for the election of these city officials. Commissioners are elected at large by qualified voters of the city. A single ballot is provided containing the names of all who have given notice of their candidacy for the office of commissioner. The six candidates receiving the highest number of votes are the elected commissioners.

Section 3 of the Act of 1957 amending the charter provides: "No ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies to be filled."

Plaintiff alleged: He was a candidate for the office of commissioner at the election to be held on 2 May 1961; he and many other electors were unwilling to comply with the requirements of the city charter and vote for a sufficient number of candidates to fill all vacancies; election officials would treat as invalid and refuse to count those ballots where the elector did not vote for six commissioners.

He asked the court to declare the statute requiring electors to vote for six commissioners void, and for an order requiring the officials to show cause why they should not be enjoined from complying with the statute.

The motion for the restraining order was presented to Judge Carr 21 April 1961. He, on that date, issued an order

directing defendants to appear on 25 April before Judge Stevens, regularly assigned to hold the courts of the Seventh District. Judge Stevens heard the parties but declined to enjoin compliance with the statute. The election was held in accord with the statutory provision. The official ballot contained thirteen names, including plaintiff's. It informed electors:

"1. To vote for a candidate on the ballot make a cross x mark in the square at the left of his name.

"2. For legal ballot, vote for six candidates.

"3. If you tear or deface or wrongfully mark this ballot, return it to registrar and get another."

The election officials declared the six whose names were marked on ballots conforming to the statute duly elected. They received 2036, 1897, 1885, 1835, 1831, and 1572 votes respectively on complete ballots.

Plaintiff received a total of 211 votes on complete ballots, that is, ballots for six commissioners. There were a total of 761 ballots not counted for any commissioner because of the failure of the elector to vote for the requisite number. Plaintiff's name appeared upon a substantial number of the 761 ballots not counted. Other names also appeared on the 761 ballots not counted, but on none of them as many as six names appeared. Subsequent to the election, plaintiff moved the court to declare the election void and the quoted statutory provision invalid because of asserted conflict with sections 10 and 37 of Art. I and sections 1 and 6 of Art. VI of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States.

At the hearing the parties stipulated the facts as summarized above. Judge Stevens, being of the opinion that

the Act was constitutional, dismissed the action. Plaintiff appealed.

Romallus O. Murphy, Samuel S. Mitchell, and George R. Greene for plaintiff appellant.
Lucas, Rand and Rose for defendant appellees.

PER CURIAM. The power and duty of a court to declare an act of the Legislature void because it violates some constitutional provision was recognized in North Carolina as early as 1787. *Bayard* v. *Singleton*, 1 N.C. 42. Courts do not, however, exercise this power at the behest of one not adversely affected by the statute. They act only when necessary for the protection of some right guaranteed by the Constitution.

The rule was succinctly stated and aptly applied when the right of *Mr. Justice Black* to serve as a member of the Supreme Court of the United States was challenged. The Court, in denying the right to question the appointment, said: "It is an established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public." *Ex parte Albert Levitt*, 302 U.S. 633, 58 S. Ct. 1, 82 L. ed. 493. We have consistently applied the rule so stated. *Greensboro* v. *Wall*, 247 N.C. 516, 101 S.E. 2d 413; *Fox* v. *Comrs. of Durham*, 244 N.C. 497, 94 S.E. 2d 482; *Turner* v. *Reidsville*, 224 N.C. 42, 29 S.E. 2d 211; *Leonard* v. *Maxwell*, 216 N.C. 89, 3 S.E. 2d 316; *Newman* v. *Comrs. of Vance*, 208 N.C. 675, 182 S.E. 453; *Spruit* v. *Comrs. of New Hanover*, 208 N.C. 695, 182

S.E. 655; *Hill* v. *Comrs. of Greene*, 209 N.C. 4, 182 S.E. 709; *Yarborough* v. *Park Comm.*, 196 N.C. 284, 145 S.E. 563.

On the admitted facts plaintiff is not in a position to call for a determination of the constitutionality of the statutory provision. Even if credited with all rejected ballots, he would not have enough votes to change the result. The court correctly dismissed the action.

Affirmed.

APPENDIX C-1

Order to Show Cause (Superior Court)

IN THE SUPERIOR COURT

North Carolina

Wilson County

T. A. Watkins,

Plaintiff,

—vs.—

City of Wilson, *et al.*

This cause coming on to be heard before the undersigned, upon a Petition for an Order to show cause why a temporary restraining order should not be granted in the above entitled cause, and it appearing to the court that the said Order should be granted; it further appearing to the court that the Order to show cause should be returnable before Honorable Henry L. Stevens, Jr., the Judge holding the courts for the Seventh Judicial District at the Superior Court in Tarboro, North Carolina, on the 25th day of April, 1961, at 2:30 PM, or as soon thereafter as counsel may be heard;

And it further appearing to the court that a copy of this order should be served upon the attorney for the City of Wilson.

Appendix C 1

Order to Show Cause (Superior Court)

Now, THEREFORE, the defendants are hereby directed to appear before Honorable Henry L. Stevens, Jr., on the 25th day of April, 1961, at 2:30 PM, at Tarboro, North Carolina, and show such cause, if any they have, as to why the temporary restraining order prayed for in plaintiff's complaint should not be granted.

LEO CARR
Judge Presiding

APPENDIX C-2

Order Denying Restraining Order (Superior Court)

IN THE SUPERIOR COURT

NORTH CAROLINA

WILSON COUNTY

T. A. WATKINS,

Plaintiff,

—VS.—

CITY OF WILSON, *et al.*

This cause coming on to be heard before His Honor Henry L. Stevens, Jr., Judge holding the Courts of the Seventh Judicial District in the Courthouse in Tarboro, North Carolina, on the 25th day of April, 1961, at 2:30 PM, upon the return of the order directing the defendants to show cause why a temporary restraining order should not be granted pending final determination of this action and being heard upon the complaint, motion, affidavits and arguments of counsel, and it appearing to the Court, upon such hearing, that the plaintiff is not entitled to said restraining order;

IT IS NOW, THEREFORE, ORDERED, ADJUDGED AND DECREED that the plaintiff's motion for restraining order as prayed for in his motion and complaint be and the same is hereby denied.

This 29th day of April, 1961.

HENRY L. STEVENS, JR.
Judge Holding the Courts of the Seventh Judicial District

APPENDIX C-3

Order Denying Motion to Declare Election Void (Superior Court)

IN THE SUPERIOR COURT

NORTH CAROLINA

WILSON COUNTY

T. A. WATKINS,

Plaintiff,

—VS.—

CITY OF WILSON, *et al.*

This cause coming on to be heard before His Honor Henry L. Stevens, Jr., Judge holding the Courts of the Seventh Judicial District in the courthouse of Wilson, North Carolina, on the 15th day of May, 1961, on motion of plaintiff that the municipal election held by the City of Wilson on May 2, 1961, be declared null and void and on the further motion of plaintiff for judgment on the pleadings, both of said motions being as shown on the record herein; and the Court being of the opinion that both of the plaintiff's motions should be denied.

IT IS NOW, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That plaintiff's motion that the municipal election held by the City of Wilson on May 2, 1961, be declared null and void be and the same is hereby denied.

Appendix C-3

Order Denying Motion to Declare Election Void (Superior Court)

2. That plaintiff's motion for judgment on the pleadings be and the same is hereby denied.

This 16th day of May, 1961.

HENRY L. STEVENS, JR.
Judge Holding the Courts in the Seventh Judicial District

APPENDIX C-4

Judgment of the Superior Court

IN THE SUPERIOR COURT

North Carolina

Wilson County

T. A. Watkins,

Plaintiff,

—vs.—

City of Wilson, *et al.*

This Cause is heard before Honorable Henry L. Stevens, Jr., Judge Presiding at June 1961 Civil Term for the Superior Court of Wilson County. It is heard without the intervention of a jury, by stipulation of the parties, and is heard pon stipulated facts and upon the Record.

The Court, being of the opinion that the election law of the City of Wilson, which is under attack, is valid and constitutional, it is upon motion of defendants ordered and adjudged that this action be and the same is hereby dismissed, and that the plaintiff and the surety upon his prosecution bond pay the costs as taxed by the Clerk.

Henry L. Stevens, Jr.
Judge Presiding

Appendix C-4

Judgment of the Superior Court

APPEAL ENTRIES

To the signing and entry of the foregoing Judgment, the plaintiff, in due time and in open court, excepts and gives notice of appeal to the Supreme Court of North Carolina. Appeal Bond fixed at $200.00.

This June 27, 1961.

HENRY L. STEVENS, JR.
Judge Presiding

APPENDIX D

Complaint

IN THE SUPERIOR COURT

NORTH CAROLINA

WILSON COUNTY

T. A. WATKINS,

Plaintiff.

—VS.—

CITY OF WILSON, a body corporate and politic; JOHN WILSON, Mayor and Chairman of the Board of Commissioners of the City of Wilson; THOMAS WATSON, JR., T. F. HACKNEY, WINETTE PETERS, H. P. BENTON, JR., EARL BRADBURY and EDGER NORRIS, Serving as the Board of Commissioners of the City of Wilson; MRS. CECIL NEWBERRY, MRS. T. L. NOE, MRS. ALBERT THOMAS, W. F. PEABODY, MRS. JOHN G. ASHE, JR., MRS. M. W. SUTTON, JR., all being Precinct Registrars appointed for the May 2, 1961, Elections of the City of Wilson; MRS. GEORGE THOMAS DANIELS, MRS. W. F. THRASHER, W. L. MORRIS, GARY T. FULGHUM, JOHN HARRISS, MRS. ANNIE BISHOP, JANIE LIVERMAN, MRS. DOVERY WATSON, M. D. JAMES, MRS. RUSSELL LANDEN, MRS. H. T. BARKLEY, MRS. ROBERT PEARCE, all being Precinct, Election Judges appointed for the May 2, 1961, Elections of the CITY OF WILSON.

Plaintiff, complaining of defendants, respectfully alleges and says:

1. That plaintiff is a citizen and resident of the City of Wilson, Wilson County, State of North Carolina; that plain-

tiff is also a registered voter of Wilson County and of the City of Wilson, North Carolina, and is entitled to vote in the elections to be held for city officials on the 2nd day of May, 1961; that plaintiff is a candidate for the office of Commissioner on the six man Board of Commissioners, which is the governing body of the City of Wilson and which six man board is scheduled to be elected during the City elections of the 2nd day of May, 1961; that plaintiff has been a citizen, resident and voter in and of the City of Wilson, North Carolina, continuously for more than eight years next preceding the filing of this complaint; that plaintiff files this complaint in his capacities as a registered voter of the City of Wilson and as a candidate for the office of Commissioner on the six-man Board of City Commissioners.

2. That the defendants and their capacities in this litigation are as follows:

(a) The defendant City of Wilson, North Carolina is a body corporate and politic and has such authority, powers and privileges as have been conferred upon it by the constitution and laws of the State of North Carolina, and which are not inconsistent with the federal and state constitutions. The defendant City of Wilson, North Carolina is authorized under its Charter to conduct and provide for the elections for certain of its city officials, including the election of its governing body, the Board of Commissioners. The defendant City of Wilson, North Carolina is joined in this action by reason of its presumed power under its charter to conduct and provide for elections for members of its Board of Commissioners and is hereafter referred to as the City of Wilson.

(b) Defendant John Wilson is the duly elected Mayor of the City of Wilson and serving and acting as Mayor of the City of Wilson and as Chairman of the Board of City Commissioners of said city, pursuant to the 1959 city elections, and Defendant John Wilson is herein joined by reason of his official capacities as such Mayor and Chairman of the said Board.

(c) Defendants Thomas Watson, Jr., T. J. Hackney, Winette Peters, H. P. Benton, Jr., Earl Bradbury and Edger Norris are acting and serving as members of the Board of Commissioners, presumably pursuant to "election" during the 1959 city elections. Under the Charter of the City of Wilson, the Board of Commissioners is charged with the duty of providing for city elections and the machinery for the same. The defendants named in this sub-paragraph are joined in this complaint by reason of functions which they are presuming to discharge as City Commissioners and by reason of the functions which they are presuming to discharge, as those functions relate to the city elections of the City of Wilson of May 2, 1961. The defendants named in this sub-paragraph are hereinafter referred to as "defendants commissioners".

(d) Defendants Mrs. Cecil Newberry, Mrs. T. L. Noe, Mrs. Albert Thomas, W. F. Peabody, Mrs. John G. Ashe, Jr., and Mrs. M. W. Sutton, Jr. have been named as Precinct Registrars for the city elections of the City of Wilson for the May 2, 1961, elections and each of the said defendants is joined in this complaint in the capacity as Precinct Registrar. The defendants named in this sub-paragraph are hereinafter referred to as "defendants registrars."

(e) Defendants Mrs. George Thomas Daniels, Mrs. W. F. Thrasher, W. L. Morris, Gary T. Fulghum, John Harriss, Mrs. Annie Bishop, Janie Liverman, Mrs. Dovey Watson, M. D. James, Mrs. Russell Landen, Mrs. H. T. Barkley and Mrs. Robert Pearce have been named as Precinct Election Judges for the city elections of the City of Wilson for the May 2, 1961, elections and each of the said defendants is joined in this complaint in the capacity as Precinct Election Judge. The defendants named in this sub-paragraph are hereinafter referred to as "defendants judges."

that all of the individual defendants are citizens and residents of the City of Wilson and of the State of North Carolina; that all of the defendants are concerned with the conduct of and the machinery for the May 2, 1961, city elections of the City of Wilson and with the conduct of and the machinery for the election of members of the Board of City Commissioners in particular.

3. That Section 4 of the Charter of the City of Wilson, as amended by the General Assembly of North Carolina in H. B. 64, Chapter 13, on March 1, 1957, reads, in part, as follows:

> "No ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies to be filled".

that under Section 4 of the Charter of the City of Wilson six commissioners are elected each biennium to the six man board of city commissioners; that since its adoption in 1957 and including the biennial city elections of 1957 and 1959 for the City of Wilson, the provision of Section 4 of

the Charter of the City of Wilson, as quoted above, has been applied by city election officers and officials; that prior to each of the above mentioned elections, City election officers and officials have made public their intention to act under the quoted provision; that during the biennial city elections of 1957 and 1959 all ballots which were cast for city commissioners, upon which less than six commissioners were voted for, were not counted in the tally of votes and were discarded by election officers and officials; that the act which amends Section 4 of the Charter of the City of Wilson, specifically provided the following:

> "All laws and clause of law in conflict with the provision of this act are hereby repealed."

That H. B. 64, Chapter 13 of the 1957 Session Laws of North Carolina and Section 4 of the Charter of the City of Wilson, North Carolina, are asked to be read as a part of this paragraph to the same effect as if herein specifically set out.

4. That plaintiff is informed, believes and has every right and cause to believe and so alleges that the defendants commissioners, registrars and judges will make public their intention to discard all ballots for city commissioners upon which less than six candidates are voted for in the May 2, 1961, city elections; that plaintiff is informed, believes and has every right and cause to believe and so alleges that defendants commissioners, registrars and judges will follow their practice in the May 2, 1961, city elections of discarding all ballots for city commissioners upon which less than six candidates are voted for; that plaintiff is informed and believes and verily alleges that the City of Wilson and defendants commissioners are presently causing ballots to

be prepared in accordance with the provisions of Section 4 of the Charter of the City of Wilson which is quoted first in paragraph 3 above.

5. That plaintiff desires to cast a ballot for city commissioners during the May 2, 1961, city election for the City of Wilson but does not desire and will not vote upon as many as six candidates; that plaintiff knows many other persons who wish to cast a ballot for city commissioners during said elections but who do not desire to vote for six candidates and who wish to vote for fewer than six candidates; that plaintiff is aware of organized effort and aspirations on the part of groups of voters in behalf of plaintiff's candidacy who wish to employ the minority technique of a "short ballot" in order to assure that plaintiff may secure as favored a ranking as possible in the tally of votes for city commissioner in the May 2, 1961, city elections for the City of Wilson; that, in this regard, the following allegations are pertinent:

(a) Plaintiff is a Negro and as such is a member of a minority group of citizens and voters who have common grievances and problems peculiar to Negro people and Negro voters in the City of Wilson, North Carolina. As stated in paragraph 1 above, plaintiff is a candidate for the city office of city commissioner during the city elections of May 2, 1961. The requirements of the provision of Section 4 of the Charter of the City of Wilson, which is quoted first in paragraph 3 above, has the effect of frustrating the efforts of minority voters and of Negro voters in particular, in obtaining the voice of one of their members on the city's governing body. The provision also has the effect of excluding from the city's governing body the presence of any member of

a minority group whose voice is not pleasing to the majority group of voters, to wit, to white voters.

6. That the provision of Section 4, of the Charter of the City of Wilson, which is quoted first in paragraph 3 above and which purports to require that plaintiff and all other voters in the May 2, 1961, city elections for the City of Wilson vote for six candidates for the offices of city commissioners, is invalid and unconstitutional by reason of the following matter:

(a) The said provision is invalid and unconstitutional because of its conflict with Article I, Sections 10 and 37 and Article VI, Sections 1 and 6 of the North Carolina Constitution and other provisions of the North Carolina Constitution, by reason of the circumstance that the provision is an invasion and subversion of a voter's right of choice as to what candidate he wishes to favor with his ballot and of a voter's right of choice as to what candidate or candidates the voter wishes to exclude from his ballot.

(b) The said provision is invalid and unconstitutional because of its conflict with the Privileges or Immunities, the Due Process and the Equal Protection Clauses of the 14th Amendment to the Constitution of the United States, by reason of the same matter alleged in sub-paragraph (a) of this paragraph, which appears immediately above.

(c) The said provision is invalid and unconstitutional because of its conflict with Article I, Sections 10 and 37 and Article VI, Sections 1 and 6 of the North Carolina Constitution, and other provisions of the North Carolina Constitution, by reason of the circum-

stance that the provision oppressively and arbitrarily denies to a minority voter, and to a Negro Voter such as plaintiff in particular, a democratic technique in which he may participate—along and in association with other voters of his group or race with like aspirations and problems—in his effort to secure the voice of one of his group on the governing body of his municipality. The provision also conflicts with the above mentioned constitutional Sections of the State Constitution by reason of the circumstances that the provision tends to oppressively and arbitrarily exclude from the municipality's governing body the presence of any member of plaintiff's racial group, to wit, the Negro race, or the presence of any other member of a minority group of voters and the presence of plaintiff in particular, unless plaintiff's voice or the voice of the member of the minority group, is pleasing to the majority group of voters, to wit, to white voters.

(d) The said provision is invalid and unconstitutional because of its conflict with the Privileges or Immunities, the Due Process and the Equal Protection Clauses of the 14th Amendment to the Constitution of the United States, by reason of the same matter alleged in sub-paragraph C of this paragraph, which appears immediately above.

7. That the application of the provision of Section 4 of the Charter of the City of Wilson, as first quoted in paragraph 3 above, is fatally injurious to the rights of plaintiff as a candidate for public office in the following particulars:

(a) A large number of persons who are interested in plaintiff's candidacy and who are not interested in

the candidacy of five other candidates will vote for plaintiff and less than five other candidates as members of the Board of City Commissioners. Under the provisions of the City Charter, as it is written, plaintiff must lose these votes in his final tally of votes, unless enforcement of the provision is restrained by this Court.

(b) A large number of persons who are interested in plaintiff's candidacy and who are not interested in the candidacy of five other candidates will decline to vote at all or will decline to vote for members of the Board of City Commissioners because of the presence of the said provision and because of unwillingness to vote for candidates against their will. Because of the application of the provision, plaintiff will be deprived of these votes in his final tally of votes, unless enforcement of the provision is restrained by this Court.

(c) A large number of persons who are interested in plaintiff's candidacy only or who are interested in plaintiff's candidacy and the candidacy of less than five other persons will unwillingly help to defeat plaintiff by unwillingly bestoring votes upon plaintiff's nearest competitors.

that the application of the said provision, which is invalid and unconstitutional, as indicated in paragraph 6 above, is fatally injurious to the rights of plaintiff as a candidate for public office, in that, the statute appropriates plaintiff's chances for election for the benefit of plaintiff's competitors for the same office.

8. That because of the application of the impleaded provision of Section 4 of the Charter of the City of Wilson

to the May 2, 1961, city elections and to the election for members of the Board of City Commissioners, plaintiff has suffered and will continue to suffer irreparable harm and damage in his candidacy for the public office for which he has filed; that the nature of the damages and harm to plaintiff, which results from the application of the said provision, is beyond measure and the said damages and harm can not be redressed in an action at law or in an action for damages; that other than an equitable action for injunctive relief, plaintiff is without a remedy for the protection of his franchise and for the protection of his candidacy for public office; that the passage of each day between the present and the date of the election increases and further aggravates the irreparable harm and damage to plaintiff and to his franchise and candidacy; that the threatened and impending application of the application of the said impleaded provision of Section 4 of the Charter of the City of Wilson is a present irreparable harm to plaintiff, as indicated in paragraphs 4, 5, 6 and 7 above and as set out in paragraphs 6 and 7 above.

9. That, by virtue of the matter set out in paragraphs 4, 5, 6, 7 and 8 above, plaintiff is entitled to an immediate and temporary injunction, restraining defendants and each of them from applying or attempting to apply, or from making public any intention to apply the impleaded provision of Section 4 of the Charter of the City of Wilson to the May 2, 1961, elections of members of the Board of City Commissioners; that, by virtue of the matter set out in paragraphs 4, 5, 6, 7 and 8 above, plaintiff is entitled to a permanent injunction, permanently restraining defendants and each of them from applying or attempting to apply, or from making public any intention to apply the said provision of

the Charter above mentioned to the elections also mentioned above; that, by virtue of the matter set out in paragraphs 4, 5, 6, 7 and 8 above, plaintiff is entitled to have the impleaded provision of Section 4 of the Charter of the City of Wilson, as it purported to require a voter to vote for six candidates for the offices of City commissioners, to be declared null and void and unconstitutional; that plaintiff is also entitled to have the elections of May 2, 1961, declared null and void, as they relate to the offices of City Commissioners, if the impleaded provision of the Charter of the City of Wilson is applied to the said elections; that plaintiff is entitled to vote and participate as a candidate in an election which is free of the operation of the impleaded provision of Section 4 of the Charter of the City of Wilson.

10. That plaintiff respectfully requests that this verified complaint be read as an affidavit in support of the temporary and permanent injunctive relief hereinafter prayed for.

WHEREFORE, plaintiff prays the Court as follows:

(1) That a temporary injunction immediately issue, temporarily restraining defendants and each of them from applying so much of the Charter of the City of Wilson, as is first quoted in paragraph 3 above, to the May 2, 1961, elections of city commissioners.

(2) That a permanent injunction issue, permanently enjoining defendants and each of them from applying so much of the Charter of the City of Wilson, as is first quoted in paragraph 3 above, to the May 2, 1961, elections of city commissioners.

(3) That this Court conclude as a matter of law that so much of Section 4 of the Charter of the City of Wilson,

as is first quoted in paragraph 3 above, is unconstitutional by reason of the state and federal constitutions, as is indicated in paragraph 6 of this complaint.

(4) That this Court conclude that any election for this biennium, to which is applied so much of Section 4 of the Charter of the City of Wilson, as is first quoted in paragraph 3 above, is null and void and without effect for the vesting of office.

(5) That this Court grant to plaintiff the right to participate in the elections for which he has filed, the freedom from the burden of the provision which is alleged in this complaint to be unconstitutional.

(6) That this Court read this verified complaint as an affidavit in support of the injunctive relief herein prayed for.

(7) For such other and further relief as to the Court may seem just and proper.

(8) For the cost of Court to be taxed against defendants.

ROMALLUS O. MURPHY
Romallus O. Murphy
557 East Nash Street
Wilson, North Carolina

SAMUEL S. MITCHELL
Samuel S. Mitchell
507 East Martin Street
Raleigh, North Carolina
Counsel for Plaintiff

Duly Verified
4-12-61

APPENDIX E

Motion of May 3, 1961

IN THE SUPERIOR COURT

NORTH CAROLINA

WILSON COUNTY

T. A. WATKINS,

Plaintiff,

—vs.—

CITY OF WILSON, *et al.*

Now Comes Plaintiff, through and by his attorneys, and respectfully shows unto the Court the following matter:

1. That on the 12th day of April, 1961, plaintiff filed the complaint in this cause; that on the 21st day of April Honorable Leo Carr signed an order requiring defendants to show cause as to why the temporary injunction prayed for by plaintiff should not be granted; that on the 25th day of April, 1961, counsel for plaintiff along with plaintiff, and counsel for defendants appeared before Honorable Henry L. Stevens, Jr., pursuant to the order to show cause, in the Superior Court of Edgecombe County; that on the 29th day of April, 1961, Honorable Henry L. Stevens, Jr., entered an order in which he denied plaintiff's motion and application for the temporary injunction prayed for by plaintiff in his complaint in this cause; that plaintiff has duly excepted from the order of Honorable Henry L.

Appendix E
Motion of May 3, 1961

Stevens, Jr., which denied his motion and application for a temporary injunction.

2. That in his complaint in this cause plaintiff had sought to restrain the application of Section 4 of the Charter of the City of Wilson to the May 2, 1961, Election of member of the Board of Commissioners for the City of Wilson; that the impleaded portion of the said provision of Section 4 of the Charter of the City of Wilson reads as follows:

> "No ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies to be filled."

That in his complaint in this cause, in paragraph 6 thereof, plaintiff alleged and asserted that the above quoted section of the Charter of the City of Wilson is unconstitutional and invalid, as compared with the standards of Sections 10 and 37 of Article I and Sections 1 and 6 of Article VI of the Constitution of the State of North Carolina and as compared with the standards of the Privileges or Immunities, the Equal Protection and the Due Process Clauses of the 14th Amendment to the Constitution of the United States.

3. That the May 2, 1961, elections for City Commissioners of the City of Wilson have now been held; that, notwithstanding plaintiff's complaint and the allegations and prayers therein contained, defendants have applied to the said elections the provision quoted in Paragraph 2 above; that at the top of each ballot for City Commissioners, which was given to each voter who participated in

Appendix E
Motion of May 3, 1961

the May 2, 1961, elections for the City of Wilson, the following matter was printed:

"OFFICIAL BALLOT
FOR THE CITY OF WILSON ELECTION

May 2, 1961

FOR COMMISSIONERS

1. To vote for a candidate on the ballot make a cross (x) mark in the square at the left of his name.
2. For legal ballot vote for six candidates.
3. If you tear or deface or wrongfully mark this ballot, return it to registrar and get another."

That a facsimile of the said ballot was reproduced in The Wilson Daily Times, the sole local daily newspaper on May 1, 1961, and a copy of said facsimile is attached to this Motion as "Exhibit A" hereof.

4. That when the votes were counted in each of the six precincts of the City of Wilson, the precinct election official discarded and failed to count all ballots for City Commissioners upon which less than six candidates were voted for; that plaintiff's name, as a candidate for City Commissioner, was upon nearly all of the ballots so discarded and not counted in the tally of votes for City Commissioners; that plaintiff is informed, believes and has every right to believe that more than seven hundred ballots were discarded and not counted by reason of the fact that the voters depositing said ballots had voted for less than six of the listed candidates for office.

5. That plaintiff was present at the meeting of the Board of Canvassers, which was held on May 3, 1961, when

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the precinct ballots for City Commissioners were canvassed; that plaintiff made the following request in writing before the said Board of Canvassers:

"To the Chairman and each of the several members of the Board of City Canvassers:

This is to request that all ballots discarded as illegal ballots, by reason of the fact that the voter voted for a number less than six of the candidates listed for the offices of City Commissioners be counted and that the candidates who were favored on such discarded ballots be given credit for the same in their tally of votes.

Filed with the Chairman in Wilson at the May 3, 1961, meeting of the Board of the City Canvassers at 12:05 PM.

This 3rd day of May, 1961.

/s/ T. A. WATKINS
Candidate for Board of City Commissioners during May 2, 1961, elections."

That, notwithstanding plaintiff's request, the said discarded ballots were not counted; that each member of the Board of Canvassers is a party-defendant to this action and has been served with a copy of the complaint in this cause and with a copy of the order of Honorable Leo Carr, which is mentioned in paragraph 1 above; that the City Board of Canvassers is composed of precinct election officials, as provided by Section 9 of the Charter of the City of Wilson; that it is respectfully requested that the said section of the Charter of the City of Wilson be read as an integral part

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Motion of May 3, 1961

of this paragraph to the same effect as if herein specifically set out; that the said Board of City election Canvassers has already purported to declare the results of the elections for City Commissioners and plaintiff, the movant herein, is not among those who have been declared elected by the Board of Canvassers.

6. That plaintiff is informed and believes and so alleges that if the provision of the Charter of the City of Wilson, which is quoted in paragraph 2 above, had not been applied to the elections for City Commissioners that he would have been elected; that plaintiff received 211 votes upon ballots which were not discarded; that plaintiff was favored upon nearly every one of the 700 ballots or more which were discarded and not counted by reason of the fact that less than six candidates were voted upon; that the six candidates which were declared elected were credited with the following tally of votes in the order listed below:

Names of Candidates	No. of Votes
1. T. J. Hackney, Jr.	2036
2. Edgar Norris	1897
3. W. A. Peters	1885
4. H. P. Benton, Jr.	1835
5. W. B. Clark, Jr.	1831
6. C. E. Raines	1332

That plaintiff is informed and believes and so alleges that many voters who would have voted for him declined to vote at all because of the oppression of their will by the illegal requirement that they must vote for six candidates; that plaintiff is informed and believes and so alleges that many voters who were primarily interested in his candidacy voted for him willingly and unwillingly for some of his competi-

Appendix E
Motion of May 3, 1961

tors who have been declared elected by the Board of Canvassers; that, in particular, the sole daily newspaper of the City of Wilson has seen fit to use its editorial columns to urge voters to comply with the illegal requirement that a voter must vote for six candidates to have his vote counted; that on April 27, 1961, on page 4 of "The Wilson Daily Times", in column 2 thereof, the following editorial appeared:

"ELECTING A BOARD

This newspaper has never tried court cases in the news columns. We do not consider this the duty of the press. The court cases are reported as accurately as possible with the desire to inform.

The decision affecting the election of the Wilson Board of City Commissioners offers many interesting points that concern the people. Judge Stevens ruled that the people were electing a body politic of which there are six members in this case. The law that was upheld says that you must vote for six for your ballot to be counted. This is certainly reasonable and fair. There are 13 fine citizens running for the six seats on the board. This is choice enough for anyone.

We are not arguing for or against anyone, but for an interest in the full board. We contend you should find out what each candidate stands for and select the six men from the list of 13 you think will render the best service to city government. You are not voting for a board of one member but for a six member board. The interest of all our people will be served by this board.

If it were legal for you to vote for only one man on the board you could find some members elected by a

small majority of those voting. This could lead to many evils, the greatest being the centering of interest on one point or person to the detriment of all others.

In fact, we doubt if one shot voting could always be counted on to accomplish the objective. This being the election of one member. It is not legal so the judge ruled. And it is easy to understand the reasoning. The objective is to elect six commissioners and for the six to receive the highest number of votes among the 13. To accomplish this, six places must be marked on the ballot. Otherwise, you are voting for a man or a member of the board. You are not exercising your right of choice for a board of six.

When our citizens offer their service to government they should feel, when elected, it is by the people. The old rule of majority holds true. It would not if one shot voting were allowed.

You take your choice of six among 13, not one or two or three among 13. For there are six men who will sit on the board.

All the publicity on the subject is good. For every ballot cast is important. Therefore remember to mark the six names you consider best qualified to serve on the City Board of Commissioners when you vote on May 2.

We hope there will not be any "spoiled" ballots or ballots marked with less than six names."

On April 29, 1961, on page 4 of said daily newspaper, in columns 1 and 2 thereof, the following editorial appeared.

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"THE CITY ELECTION

Those who will direct the government of our city will be elected on Tuesday, May 2. The six elected will mold the type of government this city will have for the next two years.

We are concerned because of the apparent lack of interest in the election. We have never known so little discussion on such an important subject.

The City of Wilson is big business. It has more than a three million dollar a year budget. The men you select on Tuesday will run this budget. The progress of the city is in their hands.

You have 13 candidates from which to choose six. Be certain to mark your ballot for six or it will not be counted. As you are electing a board of six.

Do you know the candidates, what they stand for, their attitude toward government, their interest in civic affairs?

All favor good, progressive government we are certain. But how do they plan to accomplish this. Five of the 13 are running for re-election. Then there are eight other candidates who desire to serve their city government as members of the Board of City Commissioners. Therefore it is important to find out as much as possible about each candidate. Because, you the voter, will decide the six you consider will give this city the best government.

Talk about the election, become interested, discuss the candidates with your friends and associates, know what they stand for and advocate. Then vote on Tuesday.

Appendix E
Motion of May 3, 1961

We have a fine city. It must grow and prosper. It will as long as the citizens are interested in its government. You select the lawmakers when you go to the polls to vote. If you do not exercise this privilege you are neglecting your most precious heritage."

That "The Wilson Daily Times" has a wide and large circulation among voters of the City of Wilson and has a correspondingly great influence upon the conduct of local readers; that the tremendous effect of the two editorials set out in this paragraph in coercing and frustrating the will of voters and in forcing their acceptance of the disputed provision of the city's charter is beyond measure or calculation.

7. In his complaint in this cause plaintiff has alleged among other things the following matter:

"that, by virtue of the matter set out in paragraphs 4, 5, 6, 7 and 8 above, plaintiff is entitled to have the impleaded provision of Section 4 of the Charter of the City of Wilson, as it purported to require a voter to vote for six candidates for the offices of City Commissioners, to be declared null and void and unconstitutional; that plaintiff is also entitled to have the elections of May 2, 1961, declared null and void, as they relate to the offices of City Commissioners, if the impleaded provision of the Charter of the City of Wilson is applied to the said elections; that plaintiff is entitled to vote and participate as a candidate in an election which is free of the operation of the impleaded provision of Section 4 of the Charter of the City of Wilson."

That in his prayers for relief plaintiff prayed, among other prayers, as follows:

Appendix E
Motion of May 3, 1961

"(3) That this Court conclude as a matter of law that so much of Section 4 of the Charter of the City of Wilson, as is first quoted in paragraph 3 above, is unconstitutional by reason of the State and Federal Constitutions, as is indicated in paragraph 6 of this complaint.

(4) That this Court conclude that any election for this biennium, to which is applied so much of Section 4 of the Charter of the City of Wilson, as is first quoted in paragraph 3 above, is null and void and without effect for the vesting of office.

(5) That this Court grant to plaintiff the right to participate in the elections for which he has filed, the freedom from the burden of the provision which is alleged in this complaint to be unconstitutional."

That, as indicated in paragraph 3 above, the notation upon each of the ballots which purports to require a voter's choice of six candidates rendered each ballot illegal and infected with the unconstitutionality complained of in plaintiff's complaint; that, as indicated in paragraphs 3, 4 and 5 above, the unconstitutionality referred to in plaintiff's complaint has actually been applied to the May 2, 1961, election by election officials to plaintiff's detriment; that, as indicated in paragraph 6 above, newspaper editorializing has given widespread momentum to the unconstitutional coercion upon voters which is complained of in plaintiff's complaint; that, as indicated in plaintiff's complaint and in this motion, the election of May 2, 1961, for City Commissioners for the City of Wilson is null and void and of no effect; that plaintiff is still entitled to the relief for which he prayed in the prayers of his complaint, as set out in this paragraph; that in order to obtain this relief and in obtaining this relief plaintiff is entitled to have the City elections of

Appendix F
Motion of May 3, 1961

May 2, 1961, declared null and void as they pertain to the election of City Commissioners for this biennium.

8. That plaintiff has verified this motion and respectfully request that it be read as an affidavit in support of the relief hereinafter requested.

WHEREFORE, plaintiff-movant respectfully moves the Court:

(1) That the Court now grant the relief prayed for in prayers number (3), (4) and (5) of plaintiff's original complaint;

(2) That, as an ancillary remedy in the granting of the above mentioned relief, this Court declare and conclude that the May 2, 1961, elections of City Commissioners is null and void and of no effect.

(3) That this Court read and accept this verified motion as an affidavit in support of the relief prayed for:

(4) That this Court grant to plaintiff-movant such other and further relief as will assure him the right to participate as a voter and as a candidate in elections for City Commissioners for this biennium.

This 3rd day of May, 1961.

ROMALLUS O. MURPHY
Wilson, North Carolina

SAMUEL S. MITCHELL
Raleigh, North Carolina

Attorneys for Plaintiff

(Duly verified)

(Motion denied. EXCEPTION. May 15, 1961 Henry L. Stevens, Jr., Judge Presiding.)

APPENDIX F

Answer

IN THE SUPERIOR COURT

NORTH CAROLINA

WILSON COUNTY

T. A. WATKINS,

Plaintiff,

—VS.—

CITY OF WILSON, *et al.*

Defendants answering the complaint of plaintiff, allege:

1. Section one of the complaint is admitted.

2. Section two of the complaint is admitted.

3. Section three of the complaint is admitted.

4. Section four of the complaint is admitted.

5. In the manner and form as alleged, section five of the complaint is denied, but it is admitted that plaintiff does not want to vote for anyone except himself.

6. Section six of the complaint is denied.

7. Section seven of the complaint is denied.

8. Section eight of the complaint is denied.

Appendix F
Answer

9. Section nine of the complaint is denied.

10. Section ten of the complaint requires no answer.

FURTHER ANSWERING THE COMPLAINT OF PLAINTIFF, DEFENDANTS ALLEGE:

1. Insofar as the May 2nd election related to the election of Commissioners of the City of Wilson, it was an election to elect a Board of Six Commissioners rather than any one particular Commissioner.

The City as a body politic cannot function without a Board of Commissioners and the election of one Commissioner would not constitute a Board of Commissioners. The provision of the election law requiring each voter to vote for six is a valid legislative determination of the method of selecting a Board of Commissioners and merely requires the full exercise of the right to vote instead of permitting a "one shot" vote. The so-called "one-shot" voting is a pernicious attempt on the part of an organized minority to impose its will without regard to the wishes of a majority of the voters.

2. Insofar as this action is instituted by plaintiff as a candidate, it now presents entirely a moot question. The plaintiff received only 211 votes, or valid ballots. There were 761 ballots which were not counted because of failure to vote for six candidates, or for other valid reasons. If the plaintiff had received the exclusive vote of the entire 761 invalid ballots, and the name of C. E. Raines had not appeared upon any of the 211 ballots, then the total vote of the plaintiff for Commissioner would have been 972 votes; whereas, if 211 votes were subtracted from the vote for C. E. Raines, he would still have received a total of 1,121

votes, which would have been a clear plurality over the vote for the plaintiff.

The allegation of the plaintiff in his Motion filed herein to the effect that many voters who would have voted for him alone did not vote at all on account of the manner of conduct of the election is pure speculation and conjecture and is not based on any demonstrable fact.

WHEREFORE, defendants pray that the method of counting ballots as now provided by law be declared valid;

That this action be dismissed, and that the defendants have and recover their costs of the plaintiff, as taxed by the Clerk; and for such other and further relief as to the Court may seem just and proper.

LUCAS, RAND & ROSE
Attorneys for Defendants

(Duly verified)

APPENDIX G

Assignments of Error

IN THE SUPERIOR COURT

NORTH CAROLINA

WILSON COUNTY

T. A. WATKINS,

Plaintiff,

—VS.—

CITY OF WILSON, *et al.*

Plaintiff groups his exceptions and assigns error as follows:

1. The trial Court committed prejudicial and reversible error by upholding the validity of Section 4 of the Charter of the City of Wilson, as amended by the North Carolina General Assembly in 1957, in House Bill 64, Chapter 13, and which reads, in part, as follows:

> "No ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies to be filled."

Said error was committed because the provision is invalid and unconstitutional because of its conflict with Article I, Sections 10, 17 and 37 and Article VI, Sections 1 and 6 of the North Carolina Constitution and other provisions of the North Carolina Constitution, by reason of the circumstance that the provision is an invasion and subversion

of a voter's right of choice as to what candidate he wishes to favor with his ballot and of a voter's right of choice as to what candidate or candidates the voter wishes to exclude from his ballot. This error is pointed up by plaintiff's EXCEPTIONS 1, 2, 3 and 4.

2. The trial Court committed prejudicial and reversible error by upholding the validity of Section 4 of the Charter of the City of Wilson, as amended by the North Carolina General Assembly in 1957, in House Bill 64, Chapter 13, and which reads, in part, as follows:

> "No ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies to be filled."

Said error was committed because the provision is invalid and unconstitutional because of its conflict with the Privileges or Immunities, the Due Process and the Equal Protection Clauses of the 14th Amendment to the Constitution of the United States, by reason of the circumstance that the provision is an invasion and subversion of a voter's right of choice as to what candidate he wishes to favor with his ballot and of a voter's right of choice as to what candidate or candidates the voter wishes to exclude from his ballot. This error is pointed up by plaintiff's EXCEPTIONS 1, 2, 3, and 4.

3. The trial Court committed prejudicial and reversible error by upholding the validity of Section 4 of the Charter of the City of Wilson, as amended by the North Carolina General Assembly in 1957, in House Bill 64, Chapter 13, and which reads, in part, as follows:

Appendix G
Assignments of Error

"No ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies to be filled."

Said error was committed because the provision is invalid and unconstitutional because of its conflict with Article I, Sections 10, 17 and 37 and Article VI, Sections 1 and 6 of the North Carolina Constitution and other provisions of the North Carolina Constitution, by reason of the circumstance that the provision oppressively and arbitrarily denies to a minority voter, and to a Negro Voter such as plaintiff in particular, a democratic technique in which he may participate—alone and in association with other voters of his group or race with like aspirations and problems—in his effort to secure the voice of one of his group on the governing body of his municipality. The provision also conflicts with the above mentioned constitutional Sections of the State Constitution by reason of the circumstances that the provision tends to oppressively and arbitrarily exclude from the municipality's governing body the presence of any member of plaintiff's racial group, to wit, the Negro race, or the presence of any other member of a minority group of voters and the presence of plaintiff in particular, unless plaintiff's voice or the voice of the member of the minority group, is pleasing to the majority group of voters, to wit, to white voters. This error is pointed up by plaintiff's EXCEPTIONS 1, 2, 3 and 4.

4. The trial Court committed prejudicial and reversible error by upholding the validity of Section 4 of the Charter of the City of Wilson, as amended by the North Carolina General Assembly in 1957, in House Bill 64, Chapter 13, and which reads, in part as follows:

Appendix G

Assignments of Error

"No ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies to be filled."

Said error was committed because the provision is invalid and unconstitutional because of its conflict with the Privileges or Immunities, the Due Process and the Equal Protection Clauses of the 14th Amendment to the Constitution of the United States, by reason of the circumstance that the provision oppressively and arbitrarily denies to a minority voter, and to a Negro Voter such as plaintiff in particular, a democratic technique in which he may participate—along and in association with other voters of his group or race with like aspirations and problems—in his effort to secure the voice of one of his group on the governing body of his municipality. The provision also conflicts with the above mentioned constitutional Sections of the United States Constitution by reason of the circumstances that the provision tends to oppressively and arbitrarily exclude from the municipality's governing body the presence of any member of plaintiff's racial group, to wit, the Negro race, or the presence of any other member of a minority group of voters and the presence of plaintiff in particular, unless plaintiff's voice or the voice of the member of the minority group, is pleasing to the majority group of voters, to wit, the white voters. This error is pointed up by plaintiff's Exceptions 1, 2, 3 and 4.

Respectfully submitted

Romallus O. Murphy
Samuel S. Mitchell
By: Romallus O. Murphy
Counsel for Plaintiff

Appendix G
Assignments of Error

Service of the above Statement of Case on Appeal, consisting of six pages, is hereby accepted by me this 11th day of July, 1961, and receipt of a copy of same is hereby acknowledged.

LUCAS, RAND and ROSE

By: OLIVER G. RAND
Counsel for Defendants.

APPENDIX H

Notice of Appeal

No. 248 SEVENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

Fall Term, 1961

From Wilson

T. A. WATKINS,

—vs.—

CITY OF WILSON.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES:

1. Notice is hereby given that T. A. Watkins, appellant above named, hereby appeals to the Supreme Court of the United States from the Final Judgment of the Supreme Court of the State of North Carolina, filed on the 23rd day of October, 1961, and which affirmed the judgment of the Superior Court of Wilson County, entered in this action on the 27th day of June, 1961, and in which latter mentioned judgment appellant, as defendant in the Superior Court of North Carolina, was denied the relief against a section of the Charter of the City of Wilson which appellant contended and still contends to be invalid and unconstitutional. Notice is further hereby given that appellant hereby appeals to the Supreme Court of the United States from the Final Judgment above mentioned of the Supreme Court of the State of North Carolina, which affirmed the judgment of the Superior Court of Wilson County, as above mentioned, for that, in the latter mentioned judgment, appellant was denied constitutional rights by virtue of state court's upholding the validity of the impleaded provision of the

Appendix B
Notice of Appeal

Charter of the City of Wilson against appellant's contention that the same was unconstitutional and had denied to him certain constitutional and fundamental rights, as are set out in the pleadings in the Record in this action.

2. Notice is also hereby given that appellant hereby appeals to the Supreme Court of the United States from the Final Judgment above mentioned of the Supreme Court of the State of North Carolina, which affirmed the judgment of the Superior Court of Wilson County, as above mentioned, for that, in the latter mentioned judgment, a provision of the Charter of the City of Wilson, a legislative enactment of the General Assembly of North Carolina, to wit, Section 4 of the Charter of the City of Wilson, was held to be valid and constitutional over appellant's objection that the same was unconstitutional as affecting his right as a voter and candidate for office as a city commissioner.

3. This appeal is taken pursuant to 28 U. S. 1257.

4. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in the said transcript the following:

(a) The Record in this cause as filed and printed for the use of the Supreme Court of North Carolina during the Fall Term, 1961, number 248, and which Record indicated and included all of the proceedings which were held before the Superior Court of Wilson County, State of North Carolina.

(b) The Opinion of the Supreme Court of North Carolina, which was filed the 11th day of October, 1961.

(c) The mandate or judgment of the Supreme Court of North Carolina, which was entered upon and following the

Opinion of the Supreme Court of North Carolina on the 23rd day of October, 1961.

(d) Notice of Appeal to the Supreme Court of the United States, with attached Certificate of Service of Notice of Appeal.

5. The following questions are presented by the Appeal:

(a) Is Section 4 of the Charter of the City of Wilson, North Carolina, and which reads as follows:

> "No Ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies to be filled."

valid and constitutional as against appellant's contention that the same is an unconstitutional and unreasonable invasion of appellant's 14th amendment rights as a voter to favor on or exclude from his ballot the names of such candidates as he chooses, in accordance the liberty guaranteed to appellant, as a voter, by the Due Process and the Privileges or Immunifies Clauses of the 14th Amendment to the federal constitution?

(b) Is Section 4 of the Charter of the City of Wilson, North Carolina, and which reads as follows:

> "No ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies to be filled."

valid and constitutional as against appellant's contention that the same is an unconstitutional and unreasonable invasion of appellant's 14th amendment rights as candidates, as well as, a voter and vote solicitor, to urge among electors the favoring on or the exclusion from ballots the names of

such candidates as appellant or his supporters may choose, in accordance with the liberty guaranteed to appellant, as a candidate for public office, as well as a voter and a vote solicitor, by Due Process and the Privileges or Immunities Clauses of the 14th Amendment to the federal Constitution?

(c) Was Section 4 of the Charter of the City of Wilson, North Carolina, and which reads as set out above, unconstitutional as applied to appellant's rights as a voter and as a candidate and as applied upon the instant record?

(d) Did the application of Section 4 of the Charter of the City of Wilson, North Carolina, and which reads as set out above, unconstitutionally deprive appellant of the rights, privileges and immunities of a voter and of a candidate, as are guaranteed by the 14th amendment to the federal Constitution?

This 8th day of January, 1962.

ROMALLUS O. MURPHY
557 East Nash Street
Wilson, North Carolina

SAMUEL S. MITCHELL
507 East Martin Street
Raleigh, North Carolina

By: SAMUEL S. MITCHELL

FILED 11:20 A.M.
January 9, 1962

In the Office of the
CLERK OF SUPREME COURT OF
NORTH CAROLINA

APPENDIX I

Proof of Service of Notice of Appeal

No. 248 SEVENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

Fall Term, 1961

From Wilson

T. A. WATKINS,

—vs.—

CITY OF WILSON.

FILED
11:20 a m
JAN 9 1962

IN THE OFFICE OF
CLERK SUPREME COURT
OF NORTH CAROLINA

I, Samuel S. Mitchell, one of the attorneys for T. A. Watkins, the appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 8th day of January, 1962, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the appellee, the City of Wilson, North Carolina, by mailing a copy in a duly addressed envelope,

with ordinary postage prepaid, to Messrs. Lucas, Rand and Rose, attorneys for appellee, City of Wilson, North Carolina and to Honorable T. W. Bruton, Attorney General of the State of North Carolina, all in full compliance of Rule 33 (1) of the Revised Rules of the Supreme Court of the United States.

This 8th day of January, 1962.

SAMUEL S. MITCHELL
Of Counsel for Appellant

APPENDIX J

Portion of the Charter of the City of Wilson

Sections—Charter City of Wilson

Sec. 4. Election of mayor, commissioners, etc.; compensation of commissioners, etc.

For the purpose of electing a mayor, a commissioner for each ward, and a judge of the municipal recorder's court, all of the City of Wilson, North Carolina, there shall be held in said city on Tuesday after the first Monday in May, one thousand nine hundred and forty-three and biennially thereafter, a nonpartisan election. The officials so elected shall hold their office until their successors are elected. One commissioner shall be elected by the voters of each ward in said city. The mayor and judge of the municipal recorder's court shall be voted for in each ward. The commissioners shall reside in the ward for which they are elected, and each commissioner shall be paid for his services twenty-five dollars ($25.00) per month and, in addition thereto, shall receive five dollars ($5.00) for each special meeting of the board attended by him. (Priv. Laws 1907, c. 408, §4; SL 1943, c. 536, §1; SL 1951, c. 471, §1; SL 1951, c. 481, §1.)

Sec. 4A. Application of general election laws to city elections.

Said elections shall be conducted, as far as practicable, in all things and in all details in accordance with the general election laws of the state, unless otherwise provided by this act, and all general laws of the State of North Carolina, relating to elections, generally, now in force or hereafter enacted, which govern elections, not inconsistent with this act, shall apply as fully to such elections and the acts and things done thereunder, as to general elections

unless different provision is made in this act; and all acts made criminal, if committed in connection with a general election shall likewise be criminal, with same punishment when committed on an election held hereunder. (Sl. 1943, c. 536, §2.)

Sec. 4B. Declaration of candidacy for election as mayor, etc., required; contents; when to be filed; fee.

Any person desiring to become a candidate for election as mayor, or judge of the municipal recorder's court, or commissioner of the City of Wilson shall on or before twelve o'clock, noon, of the first Monday in April preceding any election held hereunder file with the City clerk his or her declaration of candidacy for election to any such office and in such declaration shall state his or her name, age, place of residence, length of time a resident of the ward in which he or she resides, and at the time of such filing pay to the City of Wilson a fee equal to one per cent of his salary for the term of his office. (Sl. 1943, c. 536, §3; Sl. 1951, c. 471, §1.)

Sec. 4C. Preparation, distribution and contents of ballots; method of voting.

When the time for filing the declaration for candidacy hereunder has expired the board of city commissioners shall cause to be prepared, for use in such election, ballots for each elective office. A sufficient number of ballots shall be furnished judges of election of each ward for the use of all qualified voters. The names of the opposing candidates, or the candidate, for each respective office shall be placed on the same ballot with a blank square to the left of each name. Voters shall place in said square opposite the name of the person such voter desires to cast the ballot

for a cross mark, and no other method of marking the ballot by the voter shall be required. No names of candidates shall be printed on the official ballots than the names of those who in apt time filed notice of their candidacy. The ballot may contain sufficient explanatory matter to designate the purpose thereof. There shall be voted in the said elections only the official ballots furnished, as herein provided for, and if other ballots be voted they shall not be counted. (SL 1943, c. 536, §4; SL 1951, c. 471, §1.)

Sec. 4D. Number of votes necessary for election to each office; procedure when there are more than two candidates and neither receive a majority.

The election for each office shall be determined by a majority vote. In the event more than two persons are candidates for the same office and neither receive a majority of the votes cast for such office the person receiving the highest number of votes cast for such office shall be declared elected unless the candidate receiving the second highest number of votes cast shall within forty-eight hours after the result of the election shall have been canvassed and declared demand by writing filed with the city clerk for a second election, which demand must be accompanied by a payment to the City of Wilson of the sum of twenty-five dollars to the use of said city, and the commissioners shall thereupon call and arrange a second election to be held on the fourth Tuesday after the first Monday in May following the election for the purpose of electing an officer as between the two high candidates. Only the candidates receiving the largest and second largest vote in the first election shall be voted on in the second election. (SL 1943, c. 536, §10; SL 1951, c. 471, §1.)

Appendix J

Portion of the Charter of the City of Wilson

1957 Session Laws—Chapter 13, Pages 37, 38

An Act to Amend the Charter of the City of Wilson So as to Provide for the Election of Municipal Officials, and to Fix Their Terms of Office.

The General Assembly of North Carolina do enact:

Section 1. That Chapter 408, Private Laws of 1907, as amended by Chapter 536, Session Laws of 1943, and as further amended, constituting the Charter of the City of Wilson, be and the same is hereby further amended by rewriting Section 1 of Chapter 536, Session Laws of 1943, the same being Section 4 of the Charter of Wilson, to read as follows:

"Section 1. For the purpose of electing a Mayor, a Board of six Commissioners, and a Judge of the Municipal Recorder's Court, all of the City of Wilson, there shall be held in said City, on Tuesday after the first Monday in May, 1957, and biennially thereafter, a nonpartisan election. The officials so elected shall hold their offices until their successors are elected and qualified. The Commissioner shall be elected at large by the qualified voters of the City."

Sec. 2. That Section 10 of Chapter 536, Session Laws of 1943, be and the same is hereby rewritten to read as follows:

"Sec. 10. The election for mayor and judge of the municipal recorder's court shall each be determined by a majority vote. In the event more than two persons are candidates for either of said offices and neither candidate receives a majority of the votes cast for such office, the person receiving the highest number of

votes cast for such office shall be declared elected unless the candidate receiving the second highest number of votes cast shall, within forty-eight hours after the result of the election shall have been canvassed and declared, demand by writing filed with the town clerk for a second election, which demand must be accompanied by a payment to the Town of Wilson of the sum of twenty-five dollars ($25.00) to the use of said Town, and the Commissioners shall thereupon call and provide for the conduction of a second election to be held on the fourth Tuesday after the first Monday in May following the first election, for the purpose of choosing a mayor or judge of the municipal recorder's court as between the two highest candidates for such office. Only the candidates receiving the largest and second largest vote for such offices in the first election shall be voted on in the second election. The six candidates receiving the highest number of votes for membership on the Board of Commissioners shall be declared elected, and there shall be no second election for any of such offices."

Sec. 3. No ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies to be filled.

Sec. 4. Each Commissioner shall receive for his services the sum of twenty-five dollars ($25.00) per month to be paid from the General Fund of the City; and in addition thereto he shall receive five dollars ($5.00) for each special meeting of the Board attended by him, to be paid also from said General Fund.

Appendix J

Portion of the Charter of the City of Wilson

Sec. 5. All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 6. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 1st day of March, 1957.

STIPULATION

It is hereby stipulated and agreed by the counsel for plaintiff and the counsel for the defendants that the above cited provisions are true and exact copies of Sections 4, 4A, 4B, 4C and 4D as they appear in the Charter of the City of Wilson; that the above quoted provision of Chapter 13 is a true and exact copy of the amendment to the Charter of the City of Wilson as the same appears on pages 37 and 38 of the 1957 Session Laws.

This 18 day of May, 1961.

ROMALLUS O. MURPHY and
SAMUEL S. MITCHELL

By: ROMALLUS O. MURPHY
Counsel for Plaintiff

LUCAS, RAND & ROSE

By: OLIVER G. RAND
Counsel for Defendants

Office-Supreme Court, U.S.
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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 789

T. A. WATKINS, *Appellant*,

v.

CITY OF WILSON, ET AL., *Appellees*.

MOTION TO DISMISS APPEAL

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 789

T. A. WATKINS, *Appellant,*

v.

CITY OF WILSON, ET AL., *Appellees.*

MOTION TO DISMISS APPEAL

The Appellees, the City of Wilson, a municipal corporation of the State of North Carolina, John Wilson, Mayor and Chairman of the Board of Commissioners of the City of Wilson; Thomas Watson, Jr., T. F. Hackney, Winette Peters, H. P. Benton, Jr., Earl Bradbury and Edger Norris, Serving as the Board of Commissioners of the City of Wilson; Mrs. Cecil Newberry, Mrs. T. L. Noe, Mrs. Albert Thomas, W. F. Pea-

body, Mrs. John G. Ashe, Jr., Mrs. M. W. Sutton, Jr., all being Precinct Registrars appointed for the May 2, 1961, Elections of the City of Wilson; Mrs. George Thomas Daniels, Mrs. W. F. Thrasher, W. L. Morris, Gary T. Fulghum, John Harriss, Mrs. Annie Bishop, Janie Liverman, Mrs. Dovery Watson, M. D. James, Mrs. Russell Landen, Mrs. H. T. Barkley, Mrs. Robert Pearce, all being Precinct, Election Judges appointed for the May 2, 1961, Elections of the City of Wilson, move this Honorable Court to dismiss the Appeal from the judgment of the Supreme Court of North Carolina, filed by that Court on October 11, 1961, and reported at 225 N. C. 510, 121 S. E. 2d 861, on the grounds that:

(I) The judgment rests on an adequate non-Federal basis; and

(II) The Appeal does not present a substantial Federal question.

STATEMENT

Appellees who move this Honorable Court for a dismissal of the instant Appeal are the City of Wilson, a municipal corporation of the State of North Carolina, and those of its municipal officers, voting registrars, and election judges who applied the relevant provisions of its City Charter to an election for municipal officers held on May 2, 1961. Appellant is one of thirteen (13) persons who, on that date, ran at large for election to the six-man Board of Commissioners of the City. He seeks to prosecute the Appeal on the assertion that one of the election provisions of the City Charter which was applied to the election violated his rights under the privileges and immunities clause, the due process clause and the equal protection clause of the 14th

Amendment to the Constitution of the United States. The provision of the Charter which he questions provides:

> "No ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies to be filled." *Section 3, Session Laws 1957*, General Assembly of North Carolina, Chapter 13, Pp. 37, 38

Prior to the election, Appellant had filed a Complaint in the Superior Court of Wilson County, North Carolina, asking for judicial conclusion that the section violated State and Federal Constitutions, for temporary and permanent injunction prohibiting its application for a conclusion that any election in this biennium to which the section was applied was null and void, and for an Order granting him leave to participate in the election free from the burdens of the provision.

Appellant's objection to this section was that it outlawed certain techniques which he calls the "single shot ballot" and the "short ballot" through the use of which he desired to secure " * * * as favored a ranking as possible in the tally of votes for city commissioner in the May 2, 1961, city elections for the City of Wilson * * * ". (Complaint, Par. 5, Statement of Jurisdiction, P. 20a) These maneuvers which Appellant expected his supporters to execute consisted of the casting of votes for Appellant alone, or for Appellant and a number of candidates, which number would be, however, less than the full six vacancies. On April 29, 1961, the Appellant's Motion for Preliminary Injunction was denied and the May 2, 1961, election was held. Six persons were declared elected to the Board of Commissioners. They received 2,036; 1,897; 1,885; 1,835;

1,831; and 1,332 votes, respectively, on completed ballots. The Appellant received 211 votes on the completed ballots. There were a total of 761 ballots not counted for any Commissioner because of the failure of the person casting the ballot to vote to fill all six vacancies. After the election, the case was heard by the Superior Court upon stipulated facts and upon the record. The details of the voting recited above were a part of this stipulation. The Superior Court gave its opinion that the election law was valid and constitutional, and ordered that the action be dismissed. Upon Appeal, the Supreme Court of North Carolina affirmed the dismissal. That Court did not, however, reach the constitutional issue, holding that since Appellant could not have been elected even if all discarded votes had been counted in his favor, he was not in a position to call for a determination of the constitutionality of the statute. The Appellees' Motion herein has been filed, under Rule 16 (b), Revised Rules of the Supreme Court of the United States, to dismiss an appeal taken from the North Carolina Supreme Court decision.

ARGUMENT

I. The Judgment of the Supreme Court of North Carolina Has An Adequate Non-Federal Basis

The Supreme Court of North Carolina did not reach any constitutional issue in this case because the record before it effectively demonstrated that the cause was moot. *Watkins* v. *City of Wilson*, 225 N. C. 510, 121 S. E. 2d 861. Before the case had concluded in the trial court, the election which Appellant had hoped to win with the aid of injunction and declaratory judgment had already taken place. The six winning candidates had already been declared elected. Of the six, the one

receiving the least number of votes had received 1,332 votes on completed ballots against the 211 votes on completed ballots received by the Appellant. Furthermore, since there were only 761 invalidated ballots, it was obvious that Appellant would have been defeated even if every one of them had been counted and counted solely in his favor. It is further to be noted that even if the 211 ballots upon which the name of the Appellant appeared had been revised into single shot ballots in his sole favor and arbitrarily subtracted from the total votes of the candidate elected with the 1,332 votes, the Appellant would still have been defeated. Therefore, at the time the Supreme Court of North Carolina decided the case, there was " * * * no actual controversy involving real and substantial rights between the parties to the record and no subject matter upon which the judgment of the Court [could] operate." *Mills* v. *Green*, 159 U. S. 651, 653, 40 L ed 293, 16 S. Ct. 132. See also *Richardson* v. *McChesney*, 218 U. S. 487, 492, 54 L ed 1121, 1122, 31 S. Ct. 43; and *Jones* v. *Montague*, 194 U. S. 147, 48 L ed 913, 24 S. Ct. 211.

The refusal of the State Supreme Court to determine a constitutional issue under such circumstances and its holding of no justiciability, presented an adequate non-Federal basis and infringed no constitutional right of the Appellant. *Love* v. *Griffith*, 266 U. S. 32, 69 L ed 157, 45 S. Ct. 12. The decision was, furthermore, in accord with standards established by this Honorable Court for correct judicial approach to constitutional questions. *Ashwander* v. *T.V.A.*, 297 U. S. 288, 80 L ed 707, 56 S. Ct. 466. (Concurring opinion Brandeis, J.) *Poe* v. *Ullman*, 367 U. S. 497, 6 L ed 2d 989, 81 S. Ct. 1752.

II. The Appeal Does Not Present a Substantial Federal Question

Appellant's claim that the asserted abridgment of his rights as a candidate and a voter present a substantial question under the privileges and immunities clause of the 14th Amendment of the United States Constitution cannot be supported.

> "The protection extended to citizens of the United States by the privileges and immunities clause includes those rights and privileges which, under the laws and Constitution of the United States, are incident to citizenship of the United States, but does not include rights pertaining to state citizenship and derived solely from the relationship of the citizen and his state established by state law. * * * The right to become a candidate for state office, like the right to vote for the election of the state officers, * * * is a right or privilege of state citizenship, and not of national citizenship which alone is protected by the privileges and immunities clause." *Snowden* v. *Hughes*, 321 U. S. 1, 6, 7, 88 L ed 497, 502, 64 S. Ct. 397

Precisely the same thing may be said of his claim under the due process clause.

> "More than forty years ago this Court determined that an unlawful denial by state action of a right to a state political office is not a denial of a right of property or of liberty secured by the due process clause. *Taylor & Marshall* v. *Beckham*, 178 U. S. 548. Only once since has this Court had occasion to consider the question and it then reaffirmed that conclusion, *Cave* v. *Newell*, 246 U. S. 650, as we reaffirm it now." *Snowden* v. *Hughes*, Supra 7

Similarly, this Honorable Court will " * * * have no difficulty with the equal protection clause because no

showing has been made that anyone comparably situated has been treated differently from Petitioner." *National Union of Marine Cooks and Stewards* v. *Arnold*, 348 U. S. 37, 41, 99 L ed 46, 75 S. Ct. 92, accord *Hile* v. *City of Cleveland*, 266 U. S. 582, 69 L ed 452, 45 S. Ct. 97.

Finally, it is submitted that the Appellant's position is not supported by equity. He does not seek equality of opportunity in the election, but rather desires a favored position in the race for office through the use of his electioneering devices. Appellant ignores the practical difficulty that his use of such methods might well call for counter-bloc methods on the part of other candidates. Such methods, carried to any length, could well defeat the orderly procedure and purpose of any at-large election to fill multiple vacancies. The existing Charter, to the contrary, has a sound basis in public policy. Its purpose may be well expressed by words which the Supreme Court of Minnesota has used concerning a similar provision.

> "The charter does not command the elector not to vote. It enjoins him to vote. No clause in the constitution guarantees him the right not to vote. It is his duty as a citizen to exercise his franchise to the full. No citizen has any constitutional right to perform half his public duty by voting for only half the number of candidates to be elected to any office, and the law that requires him to perform his full public duty and vote for all he may as a condition to vote for any is not an unwarranted restriction of his right to vote 'for all officers' to be elected." *Farrell* v. *Hicken*, 125 Minn. 407, 147 N.W. 815, 818

Appellees believe that these goals speak for themselves.

CONCLUSION

The Motion to Dismiss on one or the other of the grounds submitted should be granted and the Appeal herein, dismissed.

Respectfully submitted,

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APPENDIX

1957 Session Laws—Chapter 13, Pages 37, 38.

AN ACT TO AMEND THE CHARTER OF THE CITY OF WILSON SO AS TO PROVIDE FOR THE ELECTION OF MUNICIPAL OFFICIALS, AND TO FIX THEIR TERMS OF OFFICE.

The General Assembly of North Carolina do enact:

Section 1. That Chapter 408, Private Laws of 1907, as amended by Chapter 536, Session Laws of 1943, and as further amended, constituting the Charter of the City of Wilson, be and the same is hereby further amended by rewriting Section 1 of Chapter 536, Session Laws of 1943, the same being Section 4 of the Charter of Wilson, to read as follows:

"Section 1. For the purpose of electing a Mayor, a Board of six Commissioners, and a Judge of the Municipal Recorder's Court, all of the City of Wilson, there shall be held in said City, on Tuesday after the first Monday in May, 1957, and biennially thereafter, a nonpartisan election. The officials so elected shall hold their offices until their successors are elected and qualified. The Commissioners shall be elected at large by the qualified voters of the City."

Sec. 2. That Section 10 of Chapter 536, Session Laws of 1943, be and the same is hereby rewritten to read as follows:

"Sec. 10. The election for mayor and judge of the municipal recorder's court shall each be determined by a majority vote. In the event more than two persons are candidates for either of said offices and neither candidate receives a majority of the votes cast for such office, the person receiving the highest number of votes cast for such office shall be declared elected unless the candidate receiving the second

highest number of votes cast shall, within forty-eight hours after the result of the election shall have been canvassed and declared, demand by writing filed with the town clerk for a second election, which demand must be accompanied by a payment to the Town of Wilson of the sum of twenty-five dollars ($25.00) to the use of said Town, and the Commissioners shall thereupon call and provide for the conduction of a second election to be held on the fourth Tuesday after the first Monday in May following the first election, for the purpose of choosing a mayor or judge of the municipal recorder's court as between the two highest candidates for such office. Only the candidates receiving the largest and second largest vote for such offices in the first election shall be voted on in the second election. The six candidates receiving the highest number of votes for membership on the Board of Commissioners shall be declared elected, and there shall be no second election for any of such offices."

Sec. 3. No ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies to be filled.

Sec. 4. Each Commissioner shall receive for his services the sum of twenty-five dollars ($25.00) per month to be paid from the General Fund of the City; and in addition thereto he shall receive five dollars ($5.00) for each special meeting of the Board attended by him, to be paid also from said General Fund.

Sec. 5. All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 6. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 1st day of March, 1957.